

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DEJWAN SIMMS,

Plaintiff,

v.

EDWARDS,

Defendant.

Case No. 1:22-cv-00028-JLT-BAM (PC)

ORDER GRANTING DEFENDANT'S
MOTION TO MODIFY THE DISCOVERY
AND SCHEDULING ORDER

(ECF No. 38)

ORDER VACATING DISPOSITIVE
MOTION DEADLINE

I. Procedural Background

Plaintiff Dejwan Simms ("Plaintiff") is a state prisoner proceeding *pro se* in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds against Defendant Edwards for deliberate indifference to medical needs and for failure to protect, in violation of the Eighth Amendment, related to the events surrounding Plaintiff's transport back to North Kern State Prison on October 16, 2020.

On October 31, 2022, Defendant filed a motion for summary judgment on the ground that Plaintiff failed to exhaust available administrative remedies before filing suit. (ECF No. 31.) Following extensions of time, Plaintiff timely filed an opposition on December 19, 2022, (ECF No. 34), and Defendant filed a reply on January 19, 2023, (ECF No. 37). The motion is fully briefed.

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1 Pursuant to the Court's June 1, 2022 discovery and scheduling order, the deadline for
2 filing all dispositive motions (other than a motion for summary judgment for failure to exhaust) is
3 April 10, 2023. (ECF No. 21.)

4 On March 10, 2023, Defendant filed a motion to modify the discovery and scheduling
5 order. (ECF No. 38.) Although Plaintiff has not yet had an opportunity to respond to the motion,
6 the Court finds a response unnecessary, and the motion is deemed submitted. Local Rule 230(l).

7 **II. Motion to Modify Discovery and Scheduling Order**

8 Defendant requests that the Court extend the deadline for the parties to file dispositive
9 motions until sixty days after adjudication of Defendant's pending failure to exhaust motion for
10 summary judgment, should the case remain active. (ECF No. 38.) Alternatively, Defendant
11 moves the Court to extend the date to file a merits-based motion for summary judgment or other
12 dispositive motion by sixty days, from April 10, 2023 to June 9, 2023. Defendant states that
13 modification of the scheduling order will preserve judicial resources and time and expense for all
14 parties if a merits-based summary judgment motion is not required. If granted, Defendant's
15 failure to exhaust summary judgment motion will conclude the case, and if denied, Defendant
16 intends to move for summary judgment on the merits of Plaintiff's claim. Discovery was closed
17 on February 1, 2023, and Defendant does not request a further extension of that deadline. (*Id.*)

18 In light of the pending motion for summary judgment, and the possibility that the motion
19 may resolve some or all of Plaintiff's claims, the Court finds good cause to grant Defendant's
20 motion. The Court will vacate the current dispositive motion deadline, to be reset if necessary to
21 sixty days following resolution of the pending motion for summary judgment.

22 **III. Order**

23 Based on the foregoing, IT IS HEREBY ORDERED as follows:

- 24 1. Defendant's motion to modify the discovery and scheduling order, (ECF No. 38), is
25 GRANTED;
- 26 2. The deadline for filing all dispositive motions (other than a motion for summary judgment
27 for failure to exhaust) is VACATED; and

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3. As necessary and appropriate, the Court will reset the dispositive motion deadline following resolution of the pending motion for summary judgment.

IT IS SO ORDERED.

Dated: March 13, 2023

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE